

HOUSE BILL No. 1841

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.7.

Synopsis: Predatory lending. Restricts certain lending acts and practices. Establishes the mortgage fraud unit under the attorney general to enforce this act and investigate violations. Preempts regulation of covered acts and practices by political subdivisions. Increases mortgage recording fees and loan broker registration and renewal fees. Allocates increased revenue to the department of education, secretary of state, attorney general, and county recorders.

Effective: January 1, 2004.

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January 23, 2003, read first time and referred to Committee on Financial Institutions.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1841

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations and consumer sales and credit and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-4.7 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2004]:

4 **ARTICLE 4.7. INDIANA FAIR LENDING ACT**

5 **Chapter 1. Consumer Protections**

6 **Sec. 1. (a) The definitions in this section apply throughout this**
7 **article.**

8 **(b) "Affiliate" means any entity that controls, is controlled by,**
9 **or is under common control with another entity, as determined**
10 **under the Federal Bank Holding Company Act (12 U.S.C. 1841 et.**
11 **seq.), as amended. The term does not include any entity whose**
12 **predominant business is providing tax deferred defined**
13 **contribution pension plans to public employees in accordance with**
14 **Sections 403(b) and 457 of the Internal Revenue Code.**

15 **(c) "Bridge loan" means temporary or short term financing**
16 **with a maturity of less than eighteen (18) months, that requires**



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1 payments of interest only until the time the entire unpaid balance
2 is due and payable.

3 (d) "Covered loan" means a consumer credit mortgage loan
4 transaction involving real property located within Indiana that is
5 considered a mortgage under Section 152 of the Home Ownership
6 and Equity Protection Act of 1994 (15 U.S.C. 1602 (aa)) and the
7 regulations adopted under that act by the Federal Reserve Board,
8 including 12 CFR 226.32, and the Official Staff Commentary to the
9 regulations as each is amended.

10 (e) "Lender" means any individual or entity that in any twelve
11 (12) month period originates one (1) or more covered loans. The
12 individual or entity to which the covered loan is initially payable,
13 either on the face of the note or contract or by agreement when
14 there is no note or contract, is considered to be the lender.

15 (f) "Mortgage broker" means a person (not an employee or
16 exclusive agent of a lender) who for compensation brings an
17 obligor and lender together to obtain a covered loan.

18 (g) "Municipality" means a county, city, town, or township.

19 (h) "Political subdivision" means a municipality, school district,
20 public library, local housing authority, fire protection district,
21 public transportation corporation, local building authority, local
22 hospital authority or corporation, local airport authority, special
23 service district, special taxing district, or other type of local
24 governmental corporate entity.

25 (i) "Ninety (90) day period" means the period beginning on the
26 day notice is provided under section 3 of this chapter and ending
27 ninety (90) days later.

28 (j) "Obligor" means each obligor, co-obligor, cosigner, or
29 guarantor obligated to repay a covered loan.

30 (k) "Servicer" has the same meaning provided in Section
31 2605(i)(2) of the Real Estate Settlement Procedures Act of 1974, 12
32 U.S.C. 2601 et. seq., as amended.

33 **Sec. 2. A covered loan is subject to the following limitations:**

34 (1) A covered loan may not require a scheduled payment that
35 is more than twice as large as the average of earlier scheduled
36 monthly payments unless such a payment becomes due and
37 payable not less than one hundred twenty (120) months after
38 the date of the loan. This prohibition does not apply when the
39 payment schedule is adjusted to account for the seasonal or
40 irregular income of the obligor or if the purpose of the loan is
41 a bridge loan connected with or related to the acquisition or
42 construction of a dwelling intended to become the obligor's

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principal dwelling.

(2) A covered loan may not contain a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This prohibition does not apply when repayment of the loan has been accelerated:

(A) by default;

(B) under a due-on-sale provision;

(C) where there is fraud or material misrepresentation by an obligor in connection with the loan; or

(D) where there is any action or inaction by the obligor that adversely affects the lender's security for the loan or any rights of the lender in such security.

(3) A covered loan may not require a payment schedule with regular periodic payments that cause the principal balance to increase. This does not prohibit negative amortization as a consequence of a temporary forbearance or restructure sought by the obligor.

(4) A covered loan may not require any increase in the interest rate as a result of a default. This provision does not apply to periodic interest rate changes in a variable rate loan otherwise consistent with the loan agreement, provided the change in the interest rate is not occasioned by the default or a permissible acceleration of the indebtedness.

(5) A covered loan may not include terms under which more than two (2) periodic payments required under the loan are paid in advance from the loan proceeds provided to the obligor.

(6) Prepayment fees are subject to the following limitations:

(A) A prepayment fee or penalty is permitted only during the first thirty-six (36) months after the date of execution of a covered loan.

(B) A lender may not include a prepayment penalty fee in a covered loan unless the lender offers the obligor the option of choosing a loan product without a prepayment fee. A lender is considered to have complied with this clause if the obligor receives and executes the following disclosure:

"LOAN PRODUCT CHOICE

I was provided with an offer to accept a product both with and without a prepayment penalty provision. I have chosen to accept the product with a prepayment penalty."

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This notice may be incorporated with any other language.
(C) No prepayment fee or penalty may be charged on a refinancing of a covered loan if the covered loan being refinanced is owned by the refinancing lender at the time of such refinancing.

Sec. 3. (a) A lender may not make a covered loan unless the lender or a mortgage broker has given the following notice (or substantially similar notice) in writing to the obligor within a reasonable time of determining that the loan would result in a covered loan but not later than the time the notice is required under the notice provision contained in 12 CFR 226.31(c) as amended.

**"CONSUMER CAUTION AND HOME OWNERSHIP
COUNSELING NOTICE**

If you obtain this loan, the lender will have a mortgage on your home. You could lose your home and any money you have put into it if you do not meet your obligations under the loan. Mortgage loan rates and closing costs and fees vary based on many factors, including your particular credit and financial circumstances, your earnings history, the loan-to-value requested, and the type of property that will secure your loan. The loan rate and fees could also vary based on which lender or mortgage broker you select.

You should consider consulting a qualified independent credit counselor or other experienced financial adviser regarding the rate, fees, and provisions of this mortgage loan before you proceed. For information on contacting a qualified credit counselor, ask your lender or call the United States Department of Housing and Urban Development's counseling hotline at 1-888-466-3487 or go to www.hud.gov/fha/sfh/hcc for a list of counselors. You are not required to complete any loan agreement merely because you have received these disclosures or have signed a loan application. If you proceed with this mortgage loan, you also should remember that you may face serious financial risks if you use this loan to pay off credit card debts and other debts in connection with this transaction and then subsequently incur significant new credit card charges or other debts. If you continue to accumulate debt after this loan is closed and then experience financial difficulties, you could lose your

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1 home and any equity you have in it if you do not meet
2 your mortgage loan obligations.

3 Property taxes and homeowner's insurance are your
4 responsibility. Not all lenders provide escrow services
5 for these payments. You should ask your lender about
6 these services.

7 Your payments on existing debts contribute to your
8 credit ratings. You should not accept any advice to
9 ignore your regular payments to your existing
10 creditors."

11 (b) A lender or mortgage broker has met its obligation to
12 provide this disclosure if the consumer provides the lender or
13 mortgage broker with a signed acknowledgment of receipt of a
14 copy of the notice set forth in subsection (a).

15 (c) A lender who originates a covered loan may not engage in a
16 pattern and practice of extending credit to an obligor based on the
17 obligor's collateral without regard to the obligor's ability to repay,
18 including the obligor's current or expected income, current
19 obligations, and employment.

20 (d) A lender will be presumed to have violated subsection (c) if
21 the lender engages in the pattern or practice of making covered
22 loans without verifying or documenting the obligor's repayment
23 ability.

24 (e) Any expected income from any source other than the
25 obligor's equity in the property securing the covered loan,
26 including regular salary or wages, gifts, expected retirement
27 payments, or income from self employment can be considered. A
28 lender may verify and document an obligor's income and current
29 obligations through any reliable source that provides the lender
30 with a reasonable basis for believing there are sufficient funds to
31 support the covered loan. Reliable sources include, but are not
32 limited to, credit reports, tax returns, pension statements, and
33 payment records for employment income.

34 (f) In the case of a stated income loan, the reasonable basis for
35 believing there are sufficient funds to support the covered loan
36 may be the income stated by the consumer, as well as other
37 information in the possession of the person originating the loan
38 after the solicitation of all information that the person customarily
39 solicits in connection with loans of that type. A lender may not
40 knowingly or willfully originate a covered loan as a stated income
41 loan with the intent to evade this section.

42 (g) A lender may not refinance the same obligor into another

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covered loan within one (1) year after having made a covered loan unless the refinancing is in the obligor's interest. An assignee holding or servicing a covered loan shall not, for the remainder of the one (1) year period after the date of the origination of the covered loan, refinance any covered loan with the same obligor into another covered loan unless the refinancing is in the obligor's interest. A lender may not engage in acts or practices to evade this subsection, including a pattern or practice of arranging for the refinancing of its own loans by affiliated or unaffiliated creditors or modifying a loan agreement, whether or not the existing loan is satisfied and replaced by the new loan, and charging a fee.

(h) A lender may not finance, directly or indirectly, into a covered loan or finance to the same obligor within thirty (30) days of making a covered loan, any individual or group credit life, credit accident and health, credit disability, or credit unemployment insurance product on a prepaid single premium basis sold in conjunction with a covered loan. Any individual or group credit life, credit accident and health, credit disability, or credit unemployment insurance premium calculated and paid on a monthly or other periodic basis shall not be considered financed by the lender. This prohibition does not include contracts issued by a government agency or private mortgage insurance company to insure the lender against loss caused by an obligor's default.

(i) A lender may not replace or consolidate a zero (0) interest rate or other low rate loan made by a governmental or nonprofit lender with a covered loan within the first ten (10) years of the low rate loan unless the current holder of the loan consents in writing to the refinancing. For purposes of this subsection, a "low rate loan" is a loan that carries a current interest rate at least two (2) percentage points below the current yield on treasury securities with a comparable maturity. If the loan's current interest rate is either a discounted introductory rate or a rate that automatically steps up over time, the fully indexed rate or the fully stepped up rate, as appropriate, should be used instead of the current rate to determine whether a loan is a low rate loan.

(j) A lender may not pay a contractor under a home improvement contract from the proceeds of a covered loan other than by an instrument payable to the obligor or jointly to the obligor and the contractor or, at the election of the obligor, through a third party escrow agent in accordance with terms established in a written agreement signed by the obligor, the lender, and the contractor before the disbursement of funds to the

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contractor.

(k) A person may not knowingly make, propose, or solicit fraudulent, false, or misleading statements on any mortgage document or on any document related to a mortgage, including a mortgage application, real estate appraisal, or real estate settlement or closing document. For purposes of this subsection, "fraudulent, false, or misleading statements" does not include mathematical errors, inadvertent transposition of numbers, typographical errors, or any other bona fide error.

Sec. 4. A servicer of a covered loan shall report at least quarterly both the favorable and unfavorable payment history information of the obligor on payments due to the lender on a covered loan to a nationally recognized consumer credit reporting agency. This subsection shall not prevent a servicer from agreeing with the obligor not to report specified payment history information in the event of a resolved or unresolved dispute with an obligor and shall not apply to covered loans held or serviced by a lender for less than ninety (90) days.

Chapter 2. Enforcement and Mortgage Fraud Unit

Sec. 1. (a) The attorney general may enforce this article for any violation occurring within one (1) year of the occurrence of the violations. It is the intent of the general assembly that persons engaged in the purchase, sale, assignment, securitization, or servicing of covered loans may not have any liability under this article for the action or inaction of persons originating such loans. The remedies provided in this article are the sole and exclusive remedies for any violation of this article.

(b) As used in this chapter, "unit" refers to the mortgage fraud unit established by this chapter.

(c) The mortgage fraud unit is established in the office of the attorney general.

(d) The attorney general shall hire qualified individuals to implement the responsibilities of the unit, subject to the budget agency's approval.

(e) The unit shall do the following:

- (1) Investigate allegations of fraud in connection with mortgage lending.
- (2) Institute appropriate administrative and civil actions to redress fraud in connection with mortgage lending.
- (3) Cooperate with federal, state, and local law enforcement agencies in the investigation of fraud in connection with mortgage lending.

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(4) Cooperate with appropriate federal and state agencies in the prosecution of criminal violations involving fraud in connection with mortgage lending.

(f) The unit shall cooperate with the following to implement this chapter:

(1) The professional licensing agency and the appropriate licensing boards with respect to persons licensed under IC 25.

(2) The department of financial institutions.

(3) The department of insurance with respect to the sale of insurance in connection with mortgage lending.

(4) The securities division of the office of the secretary of state.

(5) The supreme court disciplinary commission with respect to attorney misconduct.

Sec. 2. The attorney general may file complaints with any of the agencies listed in section 1(f) of this chapter to implement this chapter.

Sec. 3. The establishment of the unit and its powers do not limit the jurisdiction of any agency described in section 1(f) of this chapter.

Sec. 4. (a) The attorney general and an investigator of the unit may do any of the following when investigating alleged fraud in connection with mortgage lending:

(1) Issue and serve a subpoena for the production of records, including records stored in electronic data processing systems, for inspection by the attorney general or the investigator.

(2) Issue and serve a subpoena for the appearance of any person before the attorney general to provide testimony under oath.

(3) Apply to a court with jurisdiction to enforce a subpoena described in subdivision (1) or (2).

(b) The attorney general may make recommendations to the general assembly for appropriate legislation to address fraud in connection with mortgage lending.

(c) The unit shall maintain an education program to inform consumers of mortgage loans about fraud in connection with mortgage lending. The unit shall cooperate with the agencies listed in section 1(f) of this chapter to develop and implement the education program required by this subsection.

Sec. 5. A lender in a covered loan who acts in good faith and fails to comply with this article does not violate this article if the lender establishes that within ninety (90) days of the discovery of

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an error and before any action under this section is instituted:

- (1) the obligor is notified of the compliance failure; and
- (2) whatever adjustments are necessary are made to the loan either to:
 - (A) make the covered loan satisfy the requirements of this article; or
 - (B) change the terms of the loan in a manner beneficial to the obligor so that the loan will no longer be considered a covered loan subject to the provisions of this article.

Chapter 3. State Power to Regulate Lending

Sec. 1. (a) The state solely shall regulate the business of originating, granting, servicing, and collecting loans and other forms of credit in Indiana and the manner in which any such business is conducted. This regulation preempts all other regulation of such activities by any political subdivision.

(b) Political subdivisions are prohibited from enacting, issuing, and enforcing ordinances, resolutions, regulations, orders, requests for proposals, or requests for bids pertaining to financial or lending activities, including ordinances, resolutions, and rules disqualifying persons from doing business with a municipality that are based upon lending terms or practices, including interest rates and fees, or from imposing reporting requirements or any other obligations upon persons regarding financial services or lending practices or upon subsidiaries or affiliates that:

- (1) are subject to the jurisdiction of the department;
- (2) are subject to the jurisdiction or regulatory supervision of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Federal Deposit Insurance Corporation, the Federal Trade Commission, or the United States Department of Housing and Urban Development;
- (3) originate, purchase, sell, assign, securitize, or service property interests or obligations created by financial transactions or loans made, executed, or originated by persons referred to in subdivision (1), (2), (4), or (5);
- (4) are chartered by the United States Congress to engage in secondary market mortgage transactions; or
- (5) are created by the state housing finance corporation.

Chapter 4. Revenue and Appropriations

Sec. 1. The fees assessed by the county recorder to record a mortgage is increased by three dollars (\$3) per mortgage filing.

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1 The county recorder shall retain fifty cents (\$0.50) of the fee
2 increase. The revenue from this fee increase is credited to the
3 securities division enforcement account created under
4 IC 23-2-1-15.

5 Sec. 2. The fee assessed under IC 23-2-5 by the secretary of state
6 for the registration of loan brokers and originators is increased by
7 fifty dollars (\$50) for renewal of a registration and by fifty dollars
8 (\$50) for an initial registration. The revenue from this fee increase
9 is credited to the attorney general.

10 Sec. 3. Fifty percent (50%) of the revenue generated by the fee
11 increases in sections 1 and 2 of this chapter is appropriated to the
12 department of education for the purpose of identifying, promoting,
13 and funding financial literacy training and programs throughout
14 the state. Such training and programs shall cover topics that
15 include budgeting, insurance, investing, managing credit, financial
16 planning, retirement savings, consumer loans, and mortgages.

17 Sec. 4. Fifty percent (50%) of the revenue generated by the fee
18 increases in sections 1 and 2 of this chapter is appropriated to the
19 mortgage fraud unit created within the office of the attorney
20 general by IC 24-4.7-2.

21 SECTION 2. [EFFECTIVE JANUARY 1, 2004] The provisions of
22 IC 24-4.7, as added by this act, are severable in the manner
23 provided by IC 1-1-1-8(b).

24 SECTION 3. [EFFECTIVE JANUARY 1, 2004] IC 24-4.7, as
25 added by this act, applies only to loans originated after December
26 31, 2003.

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